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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. | |
|---------------------|-------------|----------------------|---------------------|-------------------------|--|
| 10/663,225 | 09/16/2003 | Kenneth R. Stott | 63116-00006USPT | 2119 | |
| 24238 | 7590 | 03/13/2006 | EXAMINER | | |
| JENKENS & GILCHRIST | | | | MARMOR II, CHARLES ALAN | |
| 1401 MCKINNEY | | | | ART UNIT | |
| SUITE 2600 | | | | 3736 | |
| HOUSTON, TX 77010 | | | | PAPER NUMBER | |

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/663,225 | STOTT ET AL. | |
| | Examiner | Art Unit | |
| | Charles A. Marmor, II | 3736 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 July 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-50 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-34,36,37 and 41-50 is/are rejected.
 7) Claim(s) 35 and 38-40 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 25 July 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>08112005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This Office Action is responsive to the Amendment filed July 25, 2005. The Examiner acknowledges the amendments to the specification; the amendments to the drawings; and the amendments to the claims 1, 7, 13, 24-26, 32-34, 38, 40, 41 and 48-50. Claims 1-50 are pending.

Claim Objections

2. Claims 14, 15, 28, 29, 34, 35, 40 and 42 are objected to because of the following informalities:

- a. At claim 14, line 2, "can be" should read --is adapted to be--.
- b. At claim 15, line 2, "can be" should read --is adapted to be--.
- c. At claim 28, line 3, "can be" should read --is adapted to be--.
- d. At claim 29, line 3, "can be" should read --is adapted to be--.
- e. At claim 34, line 3, "can be" should read --is adapted to be--.
- f. At claim 35, line 3, "can be" should read --is adapted to be--.
- g. At claim 40, line 4, "gather" should read --gathering--.
- h. At claim 42, line 2, "can be" should read --is adapted to be--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 15 recites the limitation "the web page of the report" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. There is no web page recited in claims 1, 13 or 15 prior to this recitation.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-31 and 50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-31 and 50 are directed to multimedia user interfaces for a computer-based automated hearing test. The claimed multimedia user interfaces appear directed to a web page, software or computer program which lacks physical structure and is intangible. These claims do not fall into one of the four statutory categories of invention. In order to be statutory a computer related claim must recite at least one element that is hardware or be functional descriptive material embodied in a computer-readable media that causes a functional change in a computer or processor in order to provide a tangible result.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-6, 12-17, 21-25, 27, 28, 31-34, 36, 37, 41-43 and 46-48 are rejected under 35

U.S.C. 103(a) as being unpatentable over Rho ('485) in view of Brown ('563).

Rho teaches an Internet interface for a computer based automated hearing test. The interface is employed with a computer having a display screen and a transducer for providing test sounds. The interface includes a patient information component configured to allow an operator or a patient to enter the patient's information into the automated hearing test (S13); a patient testing component configured to allow a patient to administer a hearing test to himself by causing the patient to interact with the automated hearing test during a hearing related test (S17-S19); and a reporting component configured to present a result of the patient's hearing test (S37). The patient information component comprises a new session screen for entering basic information about the patient and listing available hearing tests. A pure sound (tone) threshold response screen allows the patient to respond during a pure tone threshold test using on-screen buttons which the patient may press in response to hearing a tone. A patient survey screen is provided for gathering hearing related information about the patient. A report screen displays a report of the result of the patient's hearing test and can be viewed as a web page using a web browser or accessed from a network connection. A patient training component instructs the patient regarding operation of the automated hearing test. A patient management component manages the patient during the automated hearing test. A system configuration component allows the operator to configure the automated hearing test. Rho teaches all of the limitations of the claims except that the reporting component presents the results in a graphical format, where

the result includes data from the patient information component and the patient testing component. Rho teaches that the result is displayed as a threshold value and a hearing hardness grade. Applicant has not disclosed that reporting results in a graphical format including data from the patient information component and the patient testing component solves any stated problem or is for any particular purpose.

Brown teaches a remote health monitoring and maintenance system that operates over the Internet. The system includes a reporting component (Figure 21) that reports results of a test in a graphical format and including data from the patient information component (i.e., patient name and test date) and the patient testing component for ease in review of the test results.

It would have been obvious to one of ordinary skill in the art at the time the of Applicant's invention to provide the system of Rho with a reporting component similar to that of Brown, combining data from the patient information component (such as patient name) and from the patient testing component (such as a graphical audiogram result indicating which/when test sounds were detected at a plurality of frequencies) in order to provide a simple format for test result review by the patient or a hearing health professional.

9. Claims 18-20, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rho ('485) in view of Brown ('563), as applied to claim 13 above and further in view of Pavlakos ('056). Rho, as modified by Brown above, teach all of the limitations of the claims except that the reporting component further comprises a search screen for searching previously saved reports, a results screen that satisfies previously saved reports that satisfy one or more search parameters, and comparison screen for displaying a comparison of two reports. Pavlakos

teaches an Internet based audiometric testing system that includes the ability to search for reports by providing a range of dates for the system to search, the ability to display the reports corresponding to the date range, and the ability to compare a recent report more prominently than an older report (see Figure 7 and paragraph [0031]). It would have been obvious to one of ordinary skill in the art at the time the of Applicant's invention to provide the system of Rho, as modified by Brown, with a search screen, results screen and comparison screen in view of the teachings of Pavlakos in order to provide for a more thorough examination of test results by allowing for searching previously saved reports and comparing of a history of reports.

10. Claims 26 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rho ('485) in view of Brown ('563), as applied to claim 24 and 48 above and further in view of Edwards et al. ('591). Rho, as modified by Brown above, teach all of the limitations of the claims except that the patient management component comprises a progress indicator. Edwards et al. teach a system and method for remotely administered, interactive healing tests. Paragraph [0113], lines 16-17, teaches that this web-based system having an interface that includes a progress bar (see Fig. 19 and 20) for indicating the progress of the patient during the automated hearing test. It would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to provide an automated hearing test interface similar to that of Rho, as modified by Brown, with a patient management component having a progress indicator similar to that of Edwards et al. in order to provide an indication of the progress of the patient during the automated hearing test.

Allowable Subject Matter

11. Claims 7-11, 29, 30 and 50 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Claim 35 and 38-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter:
Regarding claims 7-11, 29, 30, 35 and 38-40, no prior art of record teach or fairly suggest a multimedia user interface on a computer, as claimed by Applicant, where the interface includes at least one of a speech threshold response screen, a speech discrimination response screen, a combination tympanogram, acoustic reflex and otoacoustic emission test screen, a paging encoder screen, and a paging options screen.

Regarding claim 50, no prior art of record teach or fairly suggest a multimedia user interface on a computer, as claimed by Applicant, where the interface includes a tympanogram/acoustic reflex component in combination with each of a patient information component; a system configuration component; a patient training component; a patient testing component; a patient management component; and a reporting component.

Response to Arguments

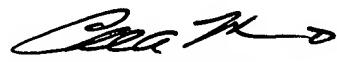
14. Applicant's arguments with respect to claims 1-50 have been considered but are moot in view of the new ground(s) of rejection. Applicant contends that Wasden may not be used in a rejection under 35 U.S.C. 103(a) in view of 35 U.S.C. 103(c). This argument is persuasive. Applicant further contends that Pavlakos does not disclose or suggest that the patient testing component is configured to allow the patient to self-administer a hearing related test or that a reporting component is provided which is configured to present a result of the hearing test in graphical format incorporating data from the patient information component and the patient testing component. While the Examiner does not necessarily agree with Applicant's "self-administered" argument, these arguments are moot in view of the new grounds of rejection citing Rho which better teaches this self-administered feature.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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January 20, 2006